NEW MEXICO AND ARIZONA LAND CO.

IBLA 85-820 Decided March 18, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 62627.
Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: 640-acre Limitation

An oil and gas lease offer for less than 640 acres or one full section, whichever is larger, is properly rejected, unless the offer includes all available lands within a section and there are no contiguous lands available for lease.

APPEARANCES: J. D. Sphar, vice president, New Mexico and Arizona Land Company, Albuquerque, New Mexico, for appellant; Maragaret C. Miller, Esq., Office of the Field Solicitor, Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

New Mexico and Arizona Land Company has appealed the July 31, 1985, decision of the New Mexico State Office, Bureau of Land Management (BLM), which rejected its oil and gas lease offer NM 62627, describing lands in lots 1, 2, 6, 7, SE 1/4, S 1/2 NE 1/4, E 1/2 SW 1/4, sec. 6, T. 3 S., R. 9 W., New Mexico Principal Meridian, Catron County, New Mexico. BLM rejected appellant's lease offer for two reasons: (1) it was for less than 640 acres or one full section, whichever is larger, and did not fall within the exceptions named in 43 CFR 3110.1-3(a), and (2) the following lands described in appellant's offer were included in existing oil and gas lease NM 61739, which had issued to Enchantment Development, on June 24, 1985: lots 6 and 7, E 1/2 SW 1/4, SE 1/4, sec. 6, T. 3 S., R. 9 W., New Mexico Principal Meridian, Catron County, New Mexico.

Appellant challenges BLM's decision on the following basis:

Sec. 6, T3S., R9W., N.M.P.M., Catron County, NM contains 407 acres for O&G filing purposes including: Lots 1, 2, 6, 7, S 1/2 NE 1/4, E 1/2 SW 1/4, SE 1/4. (For example, reference

> page 31, NM 477 of the August 1984 Simo List as published by the BLM). The adverse lease application was for less than all of the entire Federal leaseable estate in that section, hence, we believe that a lease should not have been issued as described in the rejection notice, or minimally, New Mexico and Arizona Land Company should have received a lease on the remainder.

[1] As adopted on May 23, 1980, 43 CFR 3110.1-3(a) provided that "[n]o offer may be made for less than 640 acres except where * * * the land is surrounded by lands not available for leasing under the [Mineral Leasing Act, 30 U.S.C. § 226 (1982)]." 1/ 45 FR 35163. On July 22, 1983, 43 CFR 3110.1-3(a) was amended to provide:

> Public domain lease offers shall not be made for less than 640 acres or 1 full section where the lands have been surveyed under the rectanglar survey system or are within an approved protracted survey, except where the offer or parcel includes all available lands within a section and there are no contiguous lands available for lease.

48 FR 33675. This regulation was further amended on January 15, 1985, to provide that "lease offers shall not be made for less than 640 acres or 1 full section, whichever is larger * * *." 50 FR 2049 (emphasis added). The preamble to the January 15, 1985, final rulemaking makes clear that the purpose of the amendment was to establish a "minimum acreage size" for a noncompetitive over-the-counter oil and gas lease offer. 50 FR at 2048.

In its answer and motion to dismiss, counsel for BLM points out the error in appellant's analysis. Athough only 407 acres were available for leasing in sec. 6, T. 3 S., R. 9 W., "contiguous lands were available for lease at the time of [appellant's] offer in Sections 5 and 7 of the same township and could have been included in appellant's offer to lease, thereby raising the total number of acres involved in the offer to at least 640 acres" (Answer and Motion to Dismiss at 2). The contiguous lands in secs. 5 and 7 were the subject of lease offer NM 61739, filed on March 11, 1985, but the lease for the those lands did not issue until June 24, 1985, subsequent to appellant's offer dated April 29, 1985. BLM correctly argues that "[l]and included within a pending lease offer is considered as available for leasing." Edward E. Nicksic, 75 IBLA 4, 5 (1983). As stated by this Board in Irvin Wall, 70 IBLA 183, 186 (1983), "[l]and included in an offer

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1/ In Irvin Wall, 70 IBLA 183 (1983) and Edward E. Nicksic, 75 IBLA 4 (1983), this Board applied the May 23, 1980, version of 43 CFR 3110.1-3(a), ruling in both cases that an offer for less than 640 acres of land is properly rejected when other lands available for leasing are contiguous. But see James M. Chudnow, 63 IBLA 369 (1982) (an offer for more than 640 acres of land available for leasing when the offer is made complies with 43 CFR 3110.1-3(a), even though some of the land becomes unavailable for leasing and the remaining land is less than 640 acres).

which has not become an issued lease is still available for filing of another offer until the first lease is signed by an authorized officer of BLM."

Moreover, we must reject appellant's argument that because lease offer NM 61739 did not describe all available lands in sec. 6, that lease offer should likewise have been rejected. As pointed out by counsel for BLM, "lease NM 61739 covers 9,118.3 acres and therefore exceeds the 640-acre minimum * * *. A lease applicant is not required to lease all 640 acres within a particular section as long as the total number of acres in the lease offer exceeds 640 acres" (Anwser and Motion to Dismiss at 2). This approach is consistent with the stated intent of 43 CFR 3110.1-3 as adopted on July 22, 1983, "to reduce the administrative burden and promote the proper development of the oil and gas resources of the public lands by requiring leases to be formed in reasonably large blocks." 48 FR at 33655. The purpose of 43 CFR 3110.1-3(a) is to establish a minimum acreage for lease offers, and an offer which exceeds that minimum need not meet the exceptions to the stated rule.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge.